

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

FRANK VOTH,

CV. 05-1360-KI

Plaintiff,

ORDER

v.

GREG LYTTLE,

Defendant.

KING, Judge

On January 20, 2006, I dismissed this action on the basis that plaintiff failed to exhaust his administrative remedies as is required by 42 U.S.C. § 1997e(a). Judgment was entered accordingly. Plaintiff moves for relief from judgment pursuant to Fed. R. Civ. P. 60.

Plaintiff makes no showing that the dismissal of his complaint for failure to exhaust was done in error. Accordingly, his motion for relief from judgment is denied. The fact that plaintiff recently filed a state tort claim notice does not dictate a contrary conclusion. See Lira v. Herrera, 427 F.3d 1164, 1170 (9th Cir. 2005) (district court must dismiss case when there is no

pre-suit exhaustion, even if there is exhaustion while suit is pending).

**CONCLUSION**

Based on the foregoing, plaintiff's motion for relief from judgment (#22) is DENIED. Plaintiff's motions to file third amended complaint (#23), and for a temporary restraining order (#25) are DENIED AS MOOT.

IT IS SO ORDERED.

DATED this 25<sup>th</sup> day of April, 2006.

/s/ Garr M. King  
Garr M. King  
United States District Judge